



Appeal Decision

Site visit made on 15 December 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/C3105/X/20/3256970

Swift House, The Lodge, Street from Baynards Green to Bucknell, Stoke Lyne OX27 8RS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Graham Cochrane against the decision of Cherwell District Council.
 - The application Ref 20/00675/CLUE, dated 6 March 2020, was refused by notice dated 27 May 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as "The lodge annexe situated next to the main lodge, swift house farm, Stoke Lyne, OX27 8RS Situated behind the lodge from b4100. The annexe has been used for more than 20 years as living accommodation and falls under lawful development." (*sic*)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description above which is taken from the application form, as I am obliged to do, although is not clear in stating what matters should be the subject of an application under the provisions of S191(1). The application form does confirm that the existing use that the LDC is sought for is "C3 – Dwellinghouses" (*sic*). That is therefore reflected in the way the Council re-described the application as "Use of the annex building as an independent, self-contained dwelling (Class C3)."

Main Issue

3. 'The Lodge' currently sits within what is a largely separate plot from the adjoining 'Swift House' and has a separate access. The building contains a kitchen, a bathroom as well as several other rooms. There is no dispute that the facilities currently provide viable facilities for potential independent living which is necessary with respect to the settled case-law definition of a dwellinghouse. However, it has been held that a building with the facilities of a self-contained unit, may nonetheless remain part of the same planning unit as the original dwellinghouse. If that is the case, the occupation of the building would not necessarily amount to a material change of use from the previous ancillary building.

4. The main issue is whether a material change of use had occurred and if so whether it continued for long enough to be immune from planning control. If a material change of use to a single dwellinghouse has occurred, it is necessary for that to have continued for a period of 4 years prior to the date of the application. This relates to the time limit for taking enforcement action as set out in S171B(2) of the Act.
5. The onus of proof is upon the appellant to demonstrate their case. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The decision will turn on matters of law rather than planning merits.

Reasons

6. The initial information submitted with the application has been supplemented by statutory declarations with the appeal submissions. It is clear from the statutory declaration of the main occupier that they lived at the site as what he has termed his "sole and independent place of main residence" from September 2014 to March 2020. That is confirmed in further 2 statutory declarations by other people with a knowledge of the property over at least some of that time.
7. At the time of my site visit, the building did not look occupied although it is the situation as at the date of the application that is relevant. I do not know whether the date in March 2020 when this occupier moved out was before or after the 6 March when the application was submitted. Moving out of the property before the date of the application would not necessarily be sufficient to interrupt the continuity of occupation, particularly if the relevant 4 year period and therefore lawfulness had already been attained before that time.
8. There is however very little detail within the submissions about the nature of the occupation of the building. Furthermore, there is no explanation about the nature of the terms "independent" or "main residence". These terms in themselves may mean different things to different people and this provides a degree of imprecision and ambiguity about what is being claimed. There is in my view a degree of uncertainty about how this occupation can be considered with respect to planning law.
9. What does seem clear is that the building was originally used for ancillary or incidental purposes to the occupation of the main dwelling 'Swift House' which is located nearby, to the east of the appeal site. The 2 buildings would have been within the same planning unit when used in connection with each other. What I saw at my visit appeared to be that the appeal site and therefore 'The Lodge' are now within a distinctly separate parcel of land albeit with an unusual feature of an oil tank straddling the boundary. The appellant has confirmed that there was sharing of utilities during his occupation. Whilst that in itself may not be completely fatal to a claim that the occupation was completely separate and independent from 'Swift House', it is also confirmed that the occupant lived in 'The Lodge' whilst his elderly parents lived in the main house. One letter also indicates that the occupant provided care for his elderly mother. This does raise a question as to the degree of functional linkage between the properties during at least part of the occupation of 'The Lodge' and there is no

clarity about the dates when any changes to the nature of the occupation may have occurred.

10. The fencing and the lack of direct access through to 'Swift House' now provides a distinct separation between the properties. 'The Lodge' also has its own access driveway. The photographs submitted of what existed before the fencing was erected are not at all clear. I cannot with, any degree of confidence, know whether there was any substantial subdivision of the land before 2019 when it has been confirmed, the fencing was erected. Fencing off of the 2 parts of land may well have made a significant difference, as a matter of fact and degree, to whether there was a single planning unit with shared facilities and closely related occupiers or 2 distinct units planning with 2 completely separate dwellinghouses.
11. If the building was occupied currently with the occupants having no close functional or familial links with the occupiers of 'Swift House', it would clearly be within a separate planning unit and could not be considered as ancillary to that dwelling. However, occupation by somebody closely connected and related to the occupiers of that other dwelling in the past when there was less physical separation, may not have involved the creation of a separate planning unit. In the latter scenario, there may not have been a material change of use of the building even though it may have had the facilities to potentially enable completely separate occupation as an independent dwelling.
12. The point at which a material change of use may have occurred was potentially when 'The Lodge' became separated physically and functionally from 'Swift House' and was also occupied independently. If the nature of the occupation did involve such a material change of use, it is not at all clear when that happened and so the continuity of any breach of planning control for the period required has not been demonstrated.
13. On the basis of the evidence submitted and the representations made, I consider that it is less than probable that 'The Lodge' had been used as a completely independent dwelling within a separate planning unit for any period of 4 years prior to the submission of the application.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the annex building as an independent, self-contained dwelling (Class C3), was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Harwood

INSPECTOR